IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 380 of 2004

1. Smt. Neelam Ahuja W/o Late Sri Satpal Ahuja.
2. Gaurav Ahuja S/o Late Sri Satpal Ahuja.
3. Gagan Ahuja S/o Late Sri Satpal Ahuja.
4. Smt. Pushpa Ahuja W/o Late Sri Bansi Lal.
   All R/o Vishnupuri, Gali No. 10,
   Rampur Road, Haldwani,
   District Nainital. ……. Appellants

Versus

1. Yogesh Kumar Pandey,
   S/o Sri N.C. Pandey,
   C/o M/s Pandey Traders,
   G.D. Pant Complex, Kusumkhera,
   Haldwani, District Nainital.
2. United India Insurance Co. Ltd,
   through its Divisional Manger,
   Divisional Office Nainital Road,
   Haldwani, District Nainital. …….. Respondents

Mr. Lalit Sharma, Advocate for the appellants.
None for respondent No. 1.
Mr. Prabhat Pandey, Advocate for respondent No. 2.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Rajesh Tandon, J.

RAJEEV GUPTA, C.J. (Oral)

This is claimants' appeal for enhancement of the compensation awarded by Motor Accident Claims Tribunal / Addl. District Judge, Haldwani, District Nainital vide Award dated 06.07.2004 passed in Motor Accident Claim Petition No. 116 of 2003.

2. The claimants, who are unfortunate widow, children and mother of deceased Satpal Ahuja, claimed compensation of Rs. 20,00,000/- for his death in the motor accident on 14.04.2003 when his motorcycle bearing registration No. UA04 1190 was dashed by the offending vehicle Canter Truck bearing registration No. UA04/8416

resulting in serious injuries to Satpal Ahuja, who succumbed to those injuries on his way to hospital. The claimants pleaded that deceased Satpal Ahuja used to earn Rs. 5,000/- per month from his Garment Shop.

3. The owner and the insurer of the offending vehicle Canter Truck contested the claim and denied their liability to pay compensation to the claimants. The owner of the Canter Truck took the plea that the deceased, himself, was responsible for the accident and as the Truck was insured with the Insurance Company, the liability, if any, to pay compensation to the claimants was that of the Insurance Company. The insurer, on the other hand, took the plea that the claimants were not dependent on the deceased; the Canter Truck was not involved in the accident; and the driver of the Truck was not holding a valid driving license.

4. The claimants examined PW1 Smt. Neelam Ahuja and PW2 Gaurav Ahuja in support of their claim, whereas the owner and the insurer of the offending vehicle Canter Truck did not examine any witness.

5. The Tribunal, on the evidence led by the parties, held that Satpal Ahuja died on account of the injuries sustained by him in the accident on 14.04.2003; the accident occurred due to the rash and negligent driving of the driver of the offending vehicle Canter Truck; and the insurer of the offending vehicle Canter Truck was liable to pay compensation to the claimants.

6. Considering the evidence led by the claimants about the income of the deceased, including his Income Tax Returns for the Assessment Years 2001-2002, 2002-2003 and 2003-2004, the Tribunal assessed his income at Rs. 60,000/- per annum. By deducting 1/3rd of the said amount as the personal expenses of the deceased, the claimants' dependency was assessed at Rs. 40,000/- per annum. By multiplying

the annual dependency of Rs. 40,000/- with the multiplier of ‘11’, the compensation was worked out to Rs. 4,40,000/-. The Tribunal awarded further sums of Rs. 2,000/- towards Funeral Expenses and Rs. 5,000/- for Loss of Consortium to the widow. Thus, a total sum of Rs. 4,47,000/- was awarded as compensation to the claimants for the death of Satpal Ahuja in the motor accident. The Tribunal, further, directed the insurer of the Canter Truck to pay interest on the amount of compensation at the rate of 9% per annum in the event of its failure to pay the amount of compensation within a period of one month from the date of the Award.

7. Mr. Lalit Sharma, the learned counsel for the appellants submitted that the Tribunal has erred in assessing the income of the deceased at Rs. 60,000/- per annum only; in selecting lower multiplier of ‘11’; and in not awarding interest on the amount of compensation and in directing only a conditional payment of interest in the event of failure of the Insurance Company to pay the amount of compensation to the claimants within a period of one month from the date of the Award.

8. Mr. Prabhat Pandey, the learned counsel for respondent No. 2 Untied India Insurance Company Ltd., on the other hand, supported the Award and submitted that the Tribunal has been quite liberal in awarding substantial compensation of Rs. 4,47,000/- to the claimants.

9. The findings recorded by the Tribunal that Satpal Ahuja died on account of the injuries sustained by him in the motor accident on 14.04.2003; the accident occurred due to the rash and negligent driving of the driver of the offending vehicle Canter Truck; and the insurer of the Canter Truck was liable to pay compensation to the claimants have, now, attained finality as the respondents have not filed any appeal against the Award.

10. The Tribunal has assessed the income of the deceased at Rs. 60,000/- per annum on the basis of his Income Tax Returns for the Assessment Years 2001-2002, 2002-2003 and 2003-2004. In these returns, his income from business was shown at Rs. 56,050/-; Rs. 57,330/- and Rs. 63,370/- respectively. The Tribunal has assessed the income of the deceased at Rs. 60,000/- per annum by taking an average of the above-mentioned figures for three years. We are satisfied that the Tribunal has rightly assessed the income of the deceased at Rs. 60,000/- per annum on the basis of his Income Tax Returns.

11. The multiplier of '11' selected by the Tribunal is rather on the higher side in view of the fact that the age of the deceased was 51 years on the date of the accident.

12. The Tribunal has further awarded sums of Rs. 2,000/- towards Funeral Expenses and Rs. 5,000/- for Loss of Consortium to the widow. Thus, we are satisfied that the Tribunal has awarded compensation under all the permissible heads.

13. We, therefore, do not find any scope for enhancement of the compensation either on account of the income of the deceased or the claimants' dependency assessed by the Tribunal or the multiplier selected.

14. The Tribunal, however, has fallen into error in not awarding interest to the claimants on the amount of compensation. By directing only a conditional payment of interest in the event of failure of the Insurance Company to pay the amount of compensation within a period of one month from the date of the Award, the Tribunal has deprived the claimants of the amount of interest, which was otherwise payable to them. The claim petition, in the present case, was filed on

28.06.2003. The Tribunal passed the Award on 06.07.2004 and the Insurance Company paid the amount of compensation to the claimants within a period of one month of the Award. Thus, the claimants are entitled to get interest on the amount of compensation of Rs. 4,47,000/- for the period from 28.06.2003 to 06.07.2004. We, with a view to avoid any delay in the computation of the amount of interest by the Claims Tribunal, deem it proper to quantify the amount of interest ourselves. Taking all the relevant factors into consideration, we quantify the amount of interest on the compensation of Rs. 4,47,000/- for the period of about one year at the rate of 6% per annum at Rs. 25,000/-

15. For the foregoing reasons, the appeal filed by the appellants under Section 173 of the Motor Vehicles Act for enhancement of the compensation is allowed in part. While affirming the quantum of compensation of Rs. 4,47,000/-, respondent No. 2 United India Insurance Company Ltd., the insurer of the offending vehicle Canter Truck, is directed to pay a sum of Rs. 25,000/- towards Interest on the amount of compensation assessed by the Tribunal to the claimants within a period of one month from today.

16. No order as to costs.

(Rajesh Tandon, J.) **(Rajeev Gupta, C.J.)**
12.09.2006 12.09.2006

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